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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNOLD BERNARD  
WILLIAMS,

Defendant and Appellant.

B297781

(Los Angeles County  
Super. Ct. No. YA078839)

APPEAL from an order of the Superior Court of Los Angeles County. Laura C. Ellison, Judge. Affirmed.

Jennifer A. Mannix, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Acting Senior Assistant Attorney General, Amanda V. Lopez and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \* \* \*

Defendant and appellant Arnold Bernard Williams appeals from the denial of his petition for resentencing pursuant to Penal Code section 1170.95. We affirm.

Defendant was charged with one count of second degree murder (Pen. Code, § 187, subd. (a)) and three counts of attempted murder (§ 187, subd. (a), § 664) arising from a gang shooting where defendant fired at rival gang members and, in the process, fatally shot one of his fellow gang members who was also involved in the altercation. A jury found defendant guilty of the murder and three attempted murders and found true a gang allegation and firearm use allegations as to each count (§ 186.22, § 12022.53, subds. (b)-(d)). Defendant was sentenced to an indeterminate sentence of 70 years to life.

This court affirmed defendant's conviction (*People v. Williams* (Sept. 18, 2014, B249950) [nonpub. opn.]). The Supreme Court denied review in November 2014.

On March 28, 2019, defendant filed a petition in propria persona requesting resentencing pursuant to Penal Code section 1170.95, a statutory provision that became effective January 1, 2019. Defendant's petition requested the appointment of counsel.

The trial court denied the petition. In the court's written denial order, the court explained: "[T]he petition is summarily denied because the petitioner is not entitled to relief as a matter of law, for the following reason: [¶] The petitioner was convicted of murder but the court file reflects that the petitioner was the actual killer and was not convicted under a theory of felony-murder of any degree, or a theory of natural and probable consequences."

Defendant contends the trial court erred in summarily denying the petition without first appointing him counsel who could have assisted him in briefing the issues and explaining why relief was warranted. Defendant argues the court's summary denial is at odds with the statutory language, the legislative history and violates his Sixth Amendment right to counsel.

We disagree. "When we interpret statutes, giving effect to legislative purpose is the touchstone of our mission." (*People v. Valencia* (2017) 3 Cal.5th 347, 409.) "The text of the statute is integral to our understanding of the statute's purpose." (*Ibid.*) "We must take 'the language . . . as it was passed into law, and [we] must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions.'" (*Id.* at pp. 409-410.)

Penal Code section 1170.95 was enacted as part of the legislative changes effected by Senate Bill 1437 (2017-2018 Reg. Sess.). "Senate Bill 1437 was enacted to 'amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.' (Stats. 2018, ch. 1015, § 1, subd. (f).)" (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.)

Penal Code section 1170.95, subdivision (a) provides, in plain language, that *only* persons "convicted of felony murder or murder under a natural and probable consequences theory" may file a petition seeking resentencing. Section 1170.95, subdivision (c) provides the court "shall review the petition and

determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section.”

Penal Code section 1170.95 contemplates an initial eligibility determination by the court. Allegations stated in a resentencing petition may be erroneous. Where, as here, there is no reasonable factual dispute the defendant is not eligible for relief, it would be a waste of judicial resources to automatically require the appointment of counsel and briefing on essentially a moot point. Several courts have similarly interpreted the statutory language and have concluded that a defendant seeking resentencing is entitled to appointment of counsel *only after* demonstrating a prima facie case. (See, e.g., *People v. Verdugo* (2020) 44 Cal.App.5th 320, 328-332, review granted Mar. 18, 2020, S260493; *People v. Cornelius* (2020) 44 Cal.App.5th 54, 58, review granted Mar. 18, 2020, S260410; *People v. Lewis* (2020) 43 Cal.App.5th 1128, 1139-1140, review granted Mar. 18, 2020, S260598.) We adopt the persuasive analyses in these decisions and conclude defendant’s rights were not infringed by the denial of counsel.

Defendant was charged and convicted as the shooter, with specific jury findings that he personally used and discharged a firearm in the commission of the offenses. The prosecution did not rely on felony murder or the natural and probable consequences doctrine in prosecuting defendant. The court, after reviewing the court file which reflected that defendant was convicted of murder and attempted murder as *the actual shooter*, was well within its rights and acting in harmony with the statutory scheme by issuing a summary denial of the petition.

Any denial of a state statutory right to counsel is subject to harmless error analysis. (*People v. Epps* (2001) 25 Cal.4th 19, 28-

29 [denial of right that is “purely a creature of state statutory law” is subject to standard for state law errors set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836].) If there were error, it was harmless by any standard.

**DISPOSITION**

The order denying the petition for resentencing is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.